IN THE

Supreme Court of the United States

OCTOBER TERM, 1923

MISSOURI PACIFIC RAILROAD COMPANY,
Petitioner
vs.
REYNOLDS DAVIS GROCERY COMPANY,
Respondent

No. [redacted]328

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS AND BRIEF IN SUPPORT THEREOF.

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MISSOURI PACIFIC RAILROAD COMPANY, Petitioner		
vs.		No. 891.
REYNOLDS DAVIS GROCERY COMPANY, Respondent		

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES:

The Missouri Pacific Railroad Company, in support of this application for writ of certiorari to the Supreme Court of the State of Arkansas shows:

On the 11th day of May, 1921, the Reynolds-Davis Grocery Company, a wholesale grocery company in Fort Smith, Arkansas, filed suit in the Cir-

cuit Court of Sebastian County, Arkansas, against the Missouri Pacific Railroad Company for the loss of sixty sacks of sugar, weighing 100 pounds each, shipped from Raceland, Louisiana, to the Reynolds-Davis Grocery Company at Fort Smith, Arkansas. In October, 1922, there was a trial before a jury in the Circuit Court of Sebastian County, resulting in a verdict and judgment in favor of Reynolds-Davis Grocery Company against the Missouri Pacific Railroad Company for $992.22, the value of the sixty sacks of sugar.

At the trial it developed that a carload of sugar was shipped in April, 1920, by B. C. Perkins & Company of Raceland, Louisiana, to the Reynolds-Davis Grocery Company in Fort Smith, Arkansas, in car C.C.&O. No. 8109, under seals No. R-660771 and 660772. The shippers loaded the sugar and filled in the bill of lading. The bill of lading was accepted by the railroad company as "Shippers load and count," and the shippers applied the seals to the car. The initial carrier was Morgans Louisiana and Texas Railroad and Steamship Company in Louisiana. The shipment was transported by this line to Texarkana, Arkansas, and by it delivered to the Missouri Pacific Railroad Company. The Missouri Pacific Railroad Company transported the sugar to within the city limits of the City of Fort Smith, Arkansas, and there

delivered it to the St. Louis-San Francisco Railway Company. The original bill of lading was not introduced in evidence, but the receipt, or memorandum, was introduced. This memorandum recited that it was an acknowledgment that a bill of lading had been issued, and recited as follows:

> "Received, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the original bill of lading, at Mathews, Louisiana, April 7, 1920, from B. C. Perkins & Co., the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination."

The petitioner's physical line of railroad, so far as this shipment is concerned, extended from Texarkana to within the city limits of Fort Smith. The bill of lading was a shippers order bill of lading, and the Reynolds-Davis Grocery Company purchased it and demanded that the car be placed at the door of its warehouse in Fort Smith. The petitioner, Mis-

souri Pacific Railroad Company, did not have tracks to respondent's warehouse, and the respondent desired that the car of sugar be placed at its warehouse. For this service of moving the car from the line of the petitioner, within the city limits of Fort Smith, over the track of the St. Louis-San Francisco Railway Company to respondent's warehouse, a rate had been approved by the Interstate Commerce Commission, and tariffs were on file showing that rate. The charge for this service was $6.30. The car was transported from Raceland, Louisiana, which was a non-agency station (the bill of lading having been issued at Mathews, Louisiana), to within the city limits of Fort Smith by the Morgan line, and the Missouri Pacific Railroad. At Fort Smith it was delivered to the St. Louis-San Francisco Railway Company, and that railway company received the car from the Missouri Pacific and took entire charge and control of the car, moved it over its own line of railroad with its own locomotive, and placed the car at the warehouse of the Reynolds-Davis Grocery Company. The transfer of control of the car from one carrier to another at Fort Smith was as complete as the transfer at Texarkana, Arkansas, between the Morgan line and the Missouri Pacific Railroad Company. The record discloses that the compensation received by the St. Louis-San Francisco

Railway Company from the shipper for transporting this car over its line was fixed in the published tariff on file with the Interstate Commerce Commission, and that the St. Louis-San Francisco Railway Company and the Missouri Pacific Railroad Company had no authority to arbitrarily fix any rate for this transportation. After the car had been delivered in good condition by the Missouri Pacific Railroad Company to the St. Louis-San Francisco Railway Company, and while the car was in the exclusive control of the St. Louis-San Francisco Railway Company, 6000 pounds of sugar were extracted from it.

There is no dispute in the record but that the loss of the sugar, which is the basis of the judgment, occurred while the car was in the exclusive control of the St. Louis-San Francisco Railway Company.

Under these facts, the trial court held that the St. Louis-San Francisco Railway Company was not a carrier, but was a special agent of the Missouri Pacific Railroad Company, and that the St. Louis-San Francisco Railway Company, although it lost the sugar, was not liable. The trial court entered up judgment against the Missouri Pacific Railroad Company for the sum of $992.22 and interest from April 21, 1920, this being the value of the sixty 100 pound

sacks of sugar, and interest thereon from the date they were lost.

An appeal was taken to the Supreme Court of Arkansas, where the judgment of the lower court was affirmed.

There can be no controversy about the facts in the case. The Supreme Court of Arkansas, in its opinion, said:

> "The car arrived at Fort Smith on April 19th, and on that day it was delivered by appellant (petitioner, Missouri Pacific Railroad Company), to the Frisco Railroad in good order with the seals unbroken. The appellant took a receipt from the Frisco Railroad showing that the car was in good order when delivered to the latter company. When the car was delivered by the latter company to appellee's (respondent, Reynolds-Davis Grocery Company) warehouse, the original seals had been broken and replaced by Frisco seals."

From this it can be seen that there is no controversy as to the fact that the sugar was lost while the car was in the care and custody of the St. Louis-San Francisco Railway Company. The Supreme Court of Arkansas then said:

"The Frisco Railroad, as already stated, is not named in the bill of lading as a connecting or delivering carrier; but, on the contrary, appellant is expressly named as the delivering carrier; its line reaches to the City of Fort Smith and it expressly undertakes to deliver this sugar in good order at its destination. It is bound by the terms of its contract."

The Court further said:

"The appellant (petitioner) paid the Frisco the sum of $6.30, their switching fee for the service in switching the car to the warehouse of appellee, (respondent). This switching fee charge was covered by tariff on file with Interstate Commerce Commission."

The Supreme Court of Arkansas correctly states these facts. The car was safely transported from Raceland, Louisiana, to the city limits of Fort Smith, Arkansas, by the Morgan line and the Missouri Pacific Railroad Company. There, the exclusive control of the sugar was relinquished to the St. Louis-San Francisco Railway Company, for which service the St. Louis-San Francisco Railway Company was paid according to the published tariffs on file with the Interstate Commerce Commission. The Frisco lost the sugar. The Supreme Court of Arkansas then

held that if the appellee had sued that railroad company for the loss of this sugar, it would not have been liable, but held that liability existed only against the Missouri Pacific Railroad Company for the loss of the sugar, although the Court stated in its opinion that the St. Louis-San Francisco Railway company was the company that lost the sugar. It is hard to believe that such was the decision, but we further quote as follows from the language of the Supreme Court of Arkansas, in its opinion, to show that we are correct in that statement:

> "In other words, if the appellee (Reynolds-Davis Grocery Company) had sued the Frisco Railroad for this loss, instead of the appellant (Missouri Pacific Railroad Company), the Frisco Railroad would not be liable to the appellee, for the simple reason that under the contract of shipment, the bill of lading, the Frisco Railroad had not contracted with the appellee to deliver this carload of sugar to the appellee's warehouse in Fort Smith. This was a service, which, under the bill of lading, appellant had contracted with the appellee to perform, and it undertook the performance thereof through its agent, the Frisco Railroad Company."

The Supreme Court of Arkansas committed

error in so holding, because the contract was the contract of the Morgans Louisiana & Texas Railroad and Steamship Company in Louisiana, and the St. Louis-San Francisco Railway Company was as much a carrier under the terms of that contract as the Missouri Pacific Railroad Company. It was not necessary to write into the face of the bill of lading the initials of the delivering carrier. The contract in the bill of lading was to deliver the shipment to destination. By the opinion of the Supreme Court of Arkansas in this case, no delivering carrier other than the initial carrier would be liable unless it was actually named in the bill of lading. In this case the Missouri Pacific Railroad Company carried the sugar as far as it could toward the point of final delivery, within the city limits of Fort Smith, and then, under the published tariff on file with the Interstate Commerce Commission, it turned the exclusive control of the sugar over to the St. Louis-San Francisco Railway, which, for the benefit of respondent, transported it to the door of respondent's warehouse. This service was a part of the interstate journey of the sugar. It was provided for in the tariffs on file with the Interstate Commerce Commission, and the rate for the service was approved by the Interstate Commerce Commission.

It was pressed upon both the trial court and

the Supreme Court of Arkansas that under the Interstate Commerce Act and the Transportation Act of 1920 the St. Louis-San Francisco Railway Company was a carrier, and that under the rules laid down by the Supreme Court of the United States involving interstate shipments the Missouri Pacific Railroad Company was an intermediate carrier, and when the undisputed evidence showed that it had not lost the sugar, there could be no liability against it. These contentions were denied by the Supreme Court of Arkansas.

A petition for rehearing was filed, again stressing the same question, and this was overruled.

Both in the trial court and in the Supreme Court of Arkansas this petitioner contended that under the Acts of Congress regulating commerce and under the tariffs on file with the Interstate Commerce Commission, pursuant to those Acts, the St. Louis-San Francisco Railway Company was the delivering carrier in this case; that it was undisputed that the loss occurred on the line of that railroad company, and that the petitioner, as an intermediate carrier on whose line the loss did not occur, was not liable.

The petition for rehearing was overruled in the Supreme Court of Arkansas and final judgment was entered on the 21st day of January, 1924.

In compliance with the rules of this Court, your petitioner furnishes and herewith attaches as an exhibit to this petition a duly certified copy of the entire transcript of the record in this cause, including the proceedings of the Court to which this writ is asked to be directed.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari may issue out of and under the seal of this Court directed to the Supreme Court of Arkansas to command said Court to certify and send to this Court on a date certain, to be therein designated, a full and complete transcript of the record and the proceedings of said Supreme Court in said cause therein entitled "Missouri Pacific Railroad Company v. Reynolds-Davis Grocery Company," and numbered in said Supreme Court 7918, to the end that said cause may be reviewed and determined by this Court as provided by the provisions of the Act of Congress known as the Judicial Code, and by the amendments thereto, including that of September 6, 1916, and that this petitioner may have other and further relief in the premises, as to this Court may seem appropriate, and in conformity with said Act of Congress, and that the judgment of said Supreme Court of Arkansas in said cause, and every part thereof, may be reversed by this Honorable Court.

BRIEF

With reference to this interstate shipment, the decisions of the Supreme Court of the United States, interpreting the Interstate Commerce Act are controlling. Certain declarations of law which control this question have been conclusively settled by the Supreme Court of the United States. They are as follows:

(a) The initial carrier was liable for any loss or damage to the sugar, regardless of where the loss or damage occurred in the course of transportation.

Atlantic Coast Line Ry. Co. v. Riverside Mills, 219 U. S. 186.

(b) Notwithstanding the absolute liability of the initial carrier, under the Interstate Commerce Act, a presumption arises in the absence of proof as to where the loss or damage to the shipment occurred that the delivering carrier was negligent, in a suit against an intermediate or delivering carrier.

Georgia F. A. R.R. Co. v. Blish Milling Co., 241 U. S. 190.

(c) In a suit for loss or damage to freight in

transit, there is no presumption against an intermediate carrier, which is neither the initial nor the delivering carrier, that the loss or damage occurred on its line, and a recovery may be had against an intermediate carrier only upon actual proof that the loss or damage occurred on its line.

Oregon, Washington R. & N. Co. v. McGinn, 258 U. S. 409.

In the last cited case, Mr. Justice Clarke said:

"The settled Federal rule is that, in the absence of statute or special contract, each connecting carrier on a through route is bound only to safely carry over its own line and safely deliver to the next connecting carrier (Myrick v. Michigan C. R. Co., 107 U. S. 102, 107; Michigan C. R. Co. v. Mineral Springs Mfg. Co., 16 Wall. 318, 324); and the liability of a connecting carrier for the safety of property delivered to it for transportation commenced when it is received, and is discharged by its delivery to and acceptance by a succeeding carrier, or its authorized agent (Pratt v. Grand Trunk R. Co., 95 U. S. 43).

"The Cummins Amendment deals with and modifies the common-law liability only of the initial carrier."

The instructions of the trial court, given at the request of the respondent, transgressed these declarations of law laid down by the Supreme Court of the United States. The trial court, in its instructions, told the jury that they should return a verdict for the respondent if they believed that the sugar was lost or damaged while in the hands of either the intermediate carrier, the Missouri Pacific, or the delivering carrier, the St. Louis & San Francisco Railway Company. The trial court seemed to act upon a theory that the Missouri Pacific Railroad Company was the delivering carrier, because it was named in the bill-of-lading as the last carrier. In this the trial court followed a line of decisions to the effect that when a railroad company transports freight to a city and there turns it over to a transfer company or a terminal company and employs that transfer company or terminal company to switch or deliver the freight, the railroad company which brought it to the town and employed the transfer or terminal company, is responsible, and that transfer or terminal company is the agent of the railroad company.

The facts in this case do not justify such a declaration on the part of the Court.

In the case at bar the entire subject of this switching was covered by the tariffs on file with the

Interstate Commerce Commission. The St. Louis-San Francisco Railway Company and the Missouri Pacific Railroad Company had no right to enter into any private contract or agreement with reference to this duty, which was a public duty, provided for by the Act of Congress, and the above decisions of the Supreme Court of the United States are controlling.

We, therefore, respectfully ask that the petition for writ of certiorari be granted, and that the judgment of the Supreme Court of Arkansas be reversed.

Respectfully submitted,

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